

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4719 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?

4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge? : NO

KANAIYALAL MANEKLAL RAVAL

Versus

STATE OF GUJARAT

Appearance:

MR PV HATHI for Petitioner
MR SK PATEL for Respondent No. 1, 2

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 11/10/1999

ORAL JUDGEMENT

1. The petitioner, an Ex-Special Auditor, Cooperative Societies (Sugar), by this petition under Article 226 of the Constitution challenges the validity and propriety of the order dated 8th August, 1986 of the respondent- State of Gujarat under which in exercise of powers conferred by clause (aa) of Sub-rule (1) of Rule 161 of Bombay Civil Services Rules, 1959, he was ordered to be prematurely retired from the Government services.

Copy of this order is there on the record of this special civil application as annexure 'A'.

2. The facts of the case, in brief, are that the petitioner entered in the Government services as a Clerk under the Cooperation Department of the former Government of Bombay w.e.f. 20th April, 1959. Through successive promotions earned by him at fairly short intervals, as per his case, he had the opportunity of securing promotion to the post in the Gujarat Cooperative Services Class II w.e.f. 28th May, 1985. He obtained Government Diploma in Cooperation and Accountancy in September, 1986 which as per his case is a prerequisite for holding responsible positions in the Cooperation Department. The details of the service career of the petitioner have been given in para-5 of the special civil application. The petitioner submits that during his long service of about 27 years, he never got adverse note in his Annual Confidential Reports. Further it is stated that he never suffered stagnation and excepting a single instance of minor penalty of withholding of one increment for a period of one year without future effect under the order dated 16th February, 1982 and that too pertaining to a remote period of his service as a Debt/Redemption Officer, Himmatnagar during 2-5-1977 to 31-8-1980, his record of service was not only clean but it must be very good also. The petitioner then made reference to the fact of filing by him an earlier petition being special civil application No. 1361 of 1982. In that petition, the petitioner claimed for his deemed promotion to the Gujarat State Cooperative Services Class II. That promotion was withhold, as per the case of the petitioner, for the reason that his one increment for a period of one year without future effect has been withhold as penalty. That special civil application is still pending. In this factual matrix, the petitioner submitted that his premature retirement from services is wholly arbitrary and unjustified. In the facts of this case, the petitioner submitted that it can not be taken to be a case where the petitioner has become altogether a deadwood or inefficient for the services where there may be justification for his premature retirement.

3. This special civil application is contested by the respondents. A reply affidavit has been filed and therein it is stated that the review committee after reviewing the case of the petitioner carefully concluded that the petitioner was not found eligible to be continued in Government service and accordingly recommended his case for premature retirement. That recommendation has been accepted by the State Government

and accordingly he was ordered to be retired prematurely. In para-5 of reply to the special civil application, it is stated that good confidential reports and good academic qualifications of an officer are not the only criteria for further continuance in Government service beyond the age of 50 years. In para-6 it is stated that if there is reason to believe that the Government servant is lacking in integrity, it would be appropriate to consider him for premature retirement irrespective of the assessment of his ability or efficiency in work. The petitioner was stated to be retired prematurely from services on these criteria. Then reference has been made to the chargesheet given to the petitioner for the alleged misconduct and of departmental inquiry proceedings as mentioned in para-6, which reads as under:

- (i) He had made false averment to the effect that the statement of a witness had been recorded though in fact it was not so.
- (ii) Though there was absolute sale of land, action had been taken for release of the land in favour of some parties, in contravention of the provisions of section 2 (1) of the Gujarat Rural Debt Relief ACT, 1976.
- (iii) Though no statement had been published on behalf of the local authorities, action pertaining to such matters had been taken by him which was in contravention of the provisions of section 7(3) and 8(4) of the Gujarat Rural Debt Relief ACT, 1976.
- (iv) It was alleged that the petitioner had accepted illegal gratification amounting to Rs.1000/- on 23-3-1980 from one party for lifting interim injunction.

4. It is not in dispute that on this inquiry, the petitioner was meted with the penalty of withholding of one grade increment for one year without future effect under the order dated 16th February, 1982.

5. Learned counsel for the petitioner contended that in the departmental inquiry initiated against the petitioner the alleged charge regarding acceptance of illegal gratification amounting to Rs.1000/- on 23rd March, 1980 from one party for lifting interim injunction has not been proved.

6. Learned counsel for the respondents does not

dispute that the charge no.4 which is alleged against the petitioner regarding his integrity has not been proved. Learned counsel for the respondents also fairly concedes that in case this charge no.4 would have been proved then minimum penalty would have been of dismissal or removal of the petitioner from the services.

7. It has next been contended that the petitioner was found to be an able and efficient officer but his premature retirement is based only on the ground that he was lacking in integrity. How high the suspicion may be but merely on suspicion, integrity of an officer can not be taken to be doubtful. Carrying this contention further, Shri Hathi learned counsel for the petitioner submitted that the incident relates to 23rd March, 1980 and chargesheet was given thereafter and the order has been passed in the inquiry on 16th February, 1982 whereas this order of premature retirement has been passed on 8th August, 1986 i.e. after more than six years of alleged incident and four years of final order passed in the departmental inquiry. This premature retirement is nothing but a penalty for alleged misconduct of taking illegal gratification which was not proved in the departmental inquiry. Lastly it is contended that in the absence of any material to form the opinion that the petitioner's integrity is doubtful, the order passed is wholly arbitrary and perverse and this court may not allow it to stand. In support of his contention, Shri Hathi placed reliance on the two decisions of the Apex Court in the case of State of Gujarat & Anr. vs. Suryakant Chunilal Shah reported in 1999 (1) GLH 193 and in the case of M.S. Bindra vs. Union of India & Ors. reported in JT 1998 (6) SC 34.

8. In contra, Shri S.K. Patel, learned A.G.P. submitted that the decision has been taken by the review committee on the basis of overall service record of the petitioner and this court may not interfere with it. It is submitted that the petitioner has not come up with the case of malafides and in the absence of the same, this court may not interfere in the matter. It has next been submitted that it is not a case where this order is said to be arbitrary. From the record of this case, it is clear that his integrity was doubtful. Merely because in the departmental inquiry that charge was not proved but it can be taken into consideration for forming of the opinion and accordingly it has been done by the review committee to which no exception can be taken. It is not a case where the decision taken by the review committee and accepted by the State Government is based on no evidence.

9. I have given my thoughtful consideration to the rival contentions of the parties.

10. From the record of the case it is clear that the impugned order has been passed only on the basis that the review committee found the integrity of the petitioner doubtful. The chargesheet is there and one of the charges was very serious though it was not proved. However, the respondents as well as the petitioner have not produced on the record of this special civil application the relevant record of the departmental inquiry. The respondents have also not produced for the perusal of this court, the record of the review committee. In these facts, now there is only averment that the petitioner's integrity was doubtful but what material was there before the review committee to form this opinion is not made known to the court. Reference has been made to the chargesheet but the chargesheet is not on record. There may be material on the record of the departmental inquiry though on the basis of which the charges would not have been proved but the opinion could have been formed by the review committee re: integrity of the petitioner. In the absence of that record, it is too difficult to accept only on the basis of this reply that the integrity of the petitioner was doubtful.

11. In the case of M.S. Bindra vs. Union of India & Ors. (*supra*) their Lordships of Hon'ble Supreme Court held that to dunk an officer into the puddle of "doubtful integrity" it is not enough that the doubt fringes on a mere hunch. That doubt should be of such a nature as would reasonably and consciously be entertainable by a reasonable man on the given material. Mere possibility is hardly sufficient to assume that it would have happened. There must be preponderance of probability for the reasonable man to entertain doubt regarding that possibility. Only then there is justification to ram an officer with the label "doubtful integrity".

12. In the case of State of Gujarat & Anr. vs. S.C. Shah (*supra*), the Hon'ble Supreme Court has held that the performance of a Govt. servant is reflected in the annual character roll entries and, therefore, one of the methods of discerning the efficiency, honesty or integrity of a Govt. servant is to look to his character roll entries for the whole tenure from the inception to the date on which decision for his compulsory retirement is taken. It is obvious that if the character roll is studded with adverse entries or the overall categorisation of the employee is poor and there is

material also to cast doubts upon his integrity, such a Govt. servant can not be said to be efficient. Efficiency is a bundle of sticks of personal assets, thickest of which is the stick of "integrity". If this is missing the whole bundle would disperse. A Govt. servant has therefore to keep his belt tight.

13. In this case, the petitioner has unblemished service record except one adversity i.e. withholding of one grade increment for one year without future effect. In his Annual Performance Report, adverse remarks are not there nor therein at any point of time his integrity was reported to be doubtful. In the case of State of Gujarat vs. S.C. Shah (supra), in para- 28 their Lordships observed:

28. Applying the principles laid down above to the instance case, what comes out is that in compulsorily retiring the respondent from service, the authorities themselves were uncertain about the action which was to be taken ultimately against him. In fact, there was hardly any material on the basis of which a bona fide opinion could have been formed that it would be in public interest to retire the respondent from service compulsorily. The material which was placed before the Review Committee has already been mentioned above. To repeat, respondent was promoted in 1981; the character roll entries for the next two years were not available on record; there were no adverse entries in the respondent's character roll about his integrity; he was involved in two criminal cases, in one of which a final report was submitted while in the other a charge-sheet was filed. Although there was no entry in his character roll that the respondent's integrity was doubtful, the Review Committee, on its own probably on the basis of the FIRs lodged against the respondent, formed the opinion that the respondent was a person of doubtful integrity. The Review Committee was constituted to assess the merits of the respondent on the basis of the character roll entries and other relevant material and to recommend whether it would be in public interest to compulsorily retire him from service or not. The Review Committee, after taking into consideration the character roll entries and noticing that there were no adverse entries and his integrity was, at no stage, doubted, proceeded, in excess of its

jurisdiction, to form its own opinion with regard to respondent's integrity merely on the basis of the FIRs lodged against him. Whether the integrity of an employee is doubtful or not, whether he is efficient and honest, is the function of the Appointing Authority or the immediate superior of that employee to consider and assess. It is not the function of the Review Committee to brand, and that too, off hand, an employee as a person of doubtful integrity. Moreover, the Review Committee did not recommend compulsory retirement. It was of the opinion that the respondent had committed grave irregularity and that he must be retained in service so that he may ultimately be dealt with and punished severely. The Secretary and the Chief Secretary, who considered the recommendations of the Review Committee, had other ideas. They thought that the investigation and subsequent prosecution of the respondent would take a long time and that it would be better to immediately dispense with his services by giving him the temptation of withdrawing the criminal cases and retiring him compulsorily from service, provided he does not approach the court against the order of compulsory retirement. This proposal too was not immediately acted upon and it was though that nobody could say whether the order of compulsory retirement would be challenged by the respondent before the court or he would merely submit to it on the temptation that criminal cases against him would be withdrawn. It was, at this stage, that the order of compulsory retirement was passed.

14. There the material was considered with reference to two criminal cases but in the case of M.S. Bindra vs. Union of India (*supra*) case was dealt with on the basis of some allegation against the officer concerned. Here in this case, I do not find any material on the record of this special civil application on the basis of which an opinion could have been formed that the integrity of the petitioner is doubtful. Only on the basis of some charge that in one case for adjournment he was alleged to have taken illegal gratification by itself is hardly sufficient to hold him an officer of doubtful integrity to the extent to weed him out from the Govt. services. It is true that if the appropriate authority forms the requisite opinion bona fide on material, its opinion may not be challengeable before the courts however it is open to the aggrieved party to contend that the requisite

opinion has not been formed or that it is based on collateral grounds or that it is an arbitrary decision. In the case of Baikuntha Nath Das and anr. vs. Chief District Medical Officer and anr. reported in JT 1992 (2) SC 1, five principles are directed to be borne in mind while considering a case of compulsory premature retirement. Out of these five principles, three are very material. A judicial scrutiny of such order is not excluded altogether but this court would not examine the matter as an appellate court but interference in such an order is only permissible where the court is satisfied that the order is passed mala fide or it is based on no evidence or it is arbitrary. Arbitrary in the sense that no reasonable person would form the requisite opinion on the given material, meaning thereby, the order is found to be a perverse order.

15. In this case, the case of malafide, as stated earlier, is not there but the learned counsel for the petitioner contended that it is an order which is based on no evidence or it is a perverse order in the sense that on the basis of the charge against the petitioner of taking illegal gratification which was not proved in the departmental inquiry, no reasonable person would have formed the opinion that the integrity of the petitioner is doubtful.

16. I find sufficient merits in this contention. Only on the basis of this charge, more so when it is not proved, no such opinion could have been formed by a reasonable person to hold the integrity of the petitioner to be doubtful. Only on the basis of allegation, without there being any material on the record, as said by the Hon'ble Supreme Court in the case of M.S. Bindra vs. Union of India (*supra*) as well as in the case of State of Gujarat vs. S.C. Shah (*supra*), no such opinion could have been formed. There is no material on the record on the basis of which an opinion could have been formed that the integrity of the petitioner is doubtful and in the absence of the same same, rightly the learned counsel for the petitioner contended it is a case which is based on no evidence or the order is perverse. This matter in fact is squarely covered by the two decisions of the Apex Court in the case of M.S. Bindra vs. Union of India and ors. (*supra*) and in the case of State of Gujarat vs. S.C. Shah (*supra*).

17. Before parting with this judgment, I may observe that where an officer exercises quasi-judicial powers or judicial powers, is always at risk and danger of complaint against him by either side in the litigation.

Naturally he can not please both of them. Interim injunction in the litigation was operating and naturally after hearing the other side if the quasi judicial authority or the judicial officer is satisfied that it has to be vacated, he can pass appropriate order and in such matters there is possibility of other side making a complaint. That was precisely appears to have happened in the present case. By reading of charge no.4 which has been alleged against the petitioner, if on the basis of such allegation, charge-sheet is given it is good and on proof of charge, his dismissal or removal would have been there but merely on this charge when it is not proved and without there being any material, it can not be made a ground for retiring an officer compulsorily/prematurely as what it has been done in the present case. Moreover, the service record of the petitioner is absolutely clean. At the cost of repetition, it is to be stated that at no point of time though the petitioner was in service since 1959, in any of his Annual Appraisal Performance Report, his integrity was reported to be doubtful. So on the basis of this allegation, no opinion could have be formed by a reasonable man against the petitioner that his integrity is doubtful.

18. As a result of the aforesaid discussion, this special civil application succeeds and the same is allowed and the order of the respondent- State of Gujarat, annexure 'A' on the record of this special civil application dated 8th August, 1986 is quashed and set aside. As a result of quashing and setting aside of this order, the petitioner shall be entitled for all the consequential benefits which follows therefrom. The respondent- State of Gujarat is directed to pay Rs.2000/as costs of this litigation to the petitioner. Rule is made absolute accordingly.

zgs/-